IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8718 of 2002

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/All Sessions Courts? : YES

BALVANTJI HALAJI PALVI (DARBAR)

Versus

STATE OF GUJARAT

Appearance:

MR VIPUL S MODI for Petitioner

MR RC KODEKAR APP for Respondent no.1

MR MM TIRMIZI for Complainant

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 18/02/2003

ORAL JUDGEMENT

1. RULE. Learned A.P.P. Mr.Kodekar waives service for the respondent State.

2. This application for bail under section 439 of the Code of Criminal Procedure is filed by the petitioner against whom the warrant for arrest was applied for on 26.4.2002 and, according to the applicant, he was arrested only on 30.11.2002. The F.I.R. dated 2.3.2002 registered as C.R. No.26 of 2002 in Deodar Police Station reported horrible instances of communal violence in which, as revealed afterwards, 11 men, 3 women and 2 children were killed and 38 other persons were seriously injured. During the course of investigation, the petitioner's presence in the mob, which is alleged to have committed the carnage, was indicated by more than one witness. According to the statement of one Ms.Havriben recorded on 5.3.2002, the petitioner was, along with several other named persons, found to be operating with deadly weapons in the mob and the daughter of that witness subsequently succumbed to her injuries, according to the postmortem note dated 9.3.2002. It was also pointed out by the learned A.P.P. that the petitioner was absconding after registration of the offence and warrants could also not be served on the petitioner for a considerable length of time. It was also pointed out by the learned A.P.P. that in a panchnama made under section 27 of the Evidence Act, weapons were recovered at the instance of the petitioner.

2. Learned counsel Mr.V.S.Modi vehemently argued that several other accused persons alleged to be involved in the same incident have been released by various orders of this Court and, therefore, the petitioner should be released on the ground of parity. The learned counsel produced almost a dozen orders of this court, in which, according to him, co-accused were released on bail. He, however, fairly conceded that in most of those cases, the advocates had not pressed for a reasoned order and no ground whatsoever of exercising the discretion in favour of the petitioners was discussed at the request of the parties. Apart from that, parity cannot be pressed only on the basis of similarity in the role ascribed to the different accused persons since decision on a bail application depends on several other factors, including the personal circumstances of the accused person and his record of behaviour before and after commission of the offence. Therefore, strictly speaking, the rule of parity can be applied only in cases where not only the role in the particular offence is found to be similar but the circumstances of the petitioner and other relevant factors are at par. In that view of the matter, the emphasis of the learned counsel that several other persons allegedly involved in the same offences were released on bail by various orders of this court loses

its appeal.

Mr.Modi also invited the Court's attention to the specific role ascribed to the petitioner by several eye-witnesses or victims of the offence. The burden of his argument was that the petitioner could not have killed the persons with the kind of weapons which were ascribed in general to two or three persons among whom the petitioner was found to be operating. It would be hazardous and improper to analyse the material at this stage even as the trial is likely to take place in near future.

3. As recently held by the Supreme Court in STATE OF MAHARASHTRA v. RITESH [2001 Cr.L.J. 1695], the High Court need not venture into referring the merits of the case for prematurely holding that there was no material on record to show that the respondent was guilty. It is also held by the Supreme Court in RAM PRATAP YADAV v. MITRA SEN YADAV [2002 AIR SCW 4851] that the High Court should keep in mind, while hearing the application for bail, the factum of the prayer having been rejected by the Sessions Court and the reasons therefor expressly set out in the order of the Sessions Court. It is specifically ordained that the order of the High Court, howsoever brief it may be, should make it appear that the High Court while forming opinion on prayer for bail was conscious of the reasons for rejection of prayer for bail as assigned by the Sessions Court. And, it is also recently observed by the Supreme Court in MANSAB ALI v. IRSAN AND ANOTHER [2002 AIR SCW 5391] that since the jurisdiction to grant bail is discretionary, it is required to be exercised with great care and caution by balancing right of liberty of an individual and interest of society in general. In granting or refusing the bail, the Courts are required to indicate, may be very briefly, the reasons for grant or refusal of bail. The jurisdiction has not to be exercised in a casual and cavalier fashion.

4. In the facts of the present case, the learned Additional Sessions Judge has, while rejecting the bail application of the petitioner, clearly referred to the material appearing against the petitioner and also considered the gravity of the offences committed in a heinous manner. It is also noted that the petitioner could be arrested after a considerable length of time even after filing of the chargesheet and that the petitioner had been shown as an absconding person. Perusal of the relevant material produced before this Court only buttresses the finding recorded by the learned

Sessions Judge. Therefore, with greatest respect to the orders of this Court cited by the learned counsel Mr.Modi and following the aforesaid judgments of the Supreme Court, this application is rejected. Notice is discharged with no order as to costs.

(D.H.Waghela,J.)

(KMG Thilake)